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LEGAL ACTIONS IN ADULTERY AND WIFE-STEALING

CONFLICTS IN MARITAL LAW AND SOCIAL CUSTOM

Though it was illegal for a Comanche wife to desert her husband, to do so was a well established Comanche custom. More than that, custom provided for effective group cooperation in extension of aid to the would-be deserting wife and her absconder. Custom and law worked at cross-purposes. The cause lay in the clash of two opposing fundamental interests which could not be integrated. The result was such "lawless" behavior as Mr. Jerome Frank describes as arising from the "pretend rules" which are so common in human societies, rules which give expression in law to principles mouthed but not wholly believed in.[1]

Before the law Comanche woman was a quasi-chattel; her man was her *baron*. Under the system of contract marriage which prevailed, a girl was bestowed upon a man ofttimes many years her senior and not of her own choosing. According to the ideal pattern she adjusted herself to the arrangement, settling into a smooth and dutiful marital career. It is the expressed belief of the older Indians that such marriages were more successful and lasting than those which were formed of romantic liaison. Unfortunately, one cannot determine the relative percentages of successful marriages for the Comanche. The Comanche law system buttressed this marital arrangement by providing institutionalized instruments for the collection of restituitive damages by any husband whose sexual claim upon his wife was infringed upon by an adulterer or wife-absconder. The husband could mete extreme punishment upon the unfaithful and hapless wife. A marriage had the full protection of the law.

The basic belief that a man's rights in marriage were exclusive (except for the privileges extended to a brother under the anticipatory levirate) and not to be impinged upon unless he had released these rights through recognized divorce, ran into counter currents of custom in the existing notions of romantic marriage (wherein younger couples sought love-mates of their own choosing) and the prevailing behavior of males in the competitive struggle for personal ranking and the attainment of bravery status. The competition for bravery ranking which was institutionalized in coup counting found its opportunity for expression *within* the tribe in the taking of women from their husbands. This threw the wife-taker and the husband into direct conflict. Not raw conflict, however, for as shall be seen, mechanisms for settling the issue without fighting had been developed.

[1] Jerome Frank, *Lawlessness* (Encyclopaedia of the Social Sciences, vol. 10, 1937), p. 227.

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183 684 The Comanche populace greatly enjoyed the spectacle of wife-stealing. The culture enhanced the procedure by providing for group cooperation in the absconding act. It is clearly discernible in this, that though the Comanches "believed" arranged marriages between an older man and younger woman were the best, their sympathies were with the young couple who tried to get together in spite of the formal pattern. Absconding took place when war parties were leaving the camp. The would-be absconder made himself a member of the raiding group and arranged for the woman to join him in the group at the first-night rendezvous. So the couple rode off on the foray with the gang of warriors.

171 Absconding with a war party is apparently unique among the Comanches, their own invention. The practice did not exist among the Shoshoneans from whom the Comanches stem. Among the Cheyennes such conduct was absolutely forbidden.[2]

PROCEDURE IN ADULTERY AND WIFE ABSCONDING

684 626 A Comanche male who had suffered a legal wrong was under social obligation to take action against the offender. For a man not to do so was not looked upon as an act of social grace; indeed, such behavior was a social disgrace. A man so acting was stamped not as magnanimous, but as lily-livered. Adultery and taking another's wife were direct attacks upon the prestige of the wife's husband. Both acts were unmistakable challenges which could not be ignored by the man who would maintain enough face to make life livable.

Naturally, the aggrieved party was not always inclined to act, nor was the reason always cowardice. If the wrong were not made public, it is obvious that public opinion could not drive a man to institute prosecution. Ridicule was the weapon used by society to cause a man to proceed after the cause for action had become public.

This is clearly brought out in the account of an adulterous youth as told by That's It.

Case 4. Adultery: Husband Slays Boy's Pony; Also That of Boy's Grandfather Informant: That's It

"An old man had a handsome grandson. Being very proud of the boy, the old man liked to boast of him in public.

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[2] An enterprising warrior tried it once. The leader of the party immediately convened his followers in council to determine the action to be followed. The man and the woman were sent back to camp, but the warriors all promised gifts to be given to the aggrieved husband. On their return from the raid the promises were handsomely fulfilled. But they also effected a formulation of the rule that no man should ever take the wife of another on a raiding party. No subsequent violations of the rule ever occurred. Llewellyn and Hoebel, *op. cit.*

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paint on yourself in some secret place.' When this happened, it broke No Bed's tabu against yellow paint—she was killed in the end by her power."

Here is a case where we see a chief (Grey Flat Lying Object was one of the great Comanche war leaders) taking the role of the champion in a new situation, this time acting for the defendant. We *should* know something of his motives in exposing her cause. We found no evidence of institutionalization of a right of asylum.

The next and the only other case we have in which a *real* attempt was made by relatives of a sick person to do direct violence to a sorcerer comes from Dr. Mirsky.

Case 27. Sorcery: Chew Up vs. Bull Roarer
Informant: Talker

"There was a man named Chew Up. He was a Yep-Eater, and had just returned from a war-raid. He asked his father, 'What is that tent doing there?' (pointing to a tipi close to his own).

"His father said, 'Your brother is very ill.'

" 'And what may be the matter with him?' he asked.

" 'Some one has shot him with his medicine. Some one put his curse on him.'

"Chew Up went into his father's tipi; there he found his mother getting food ready for him. His father followed him in and addressed him. 'Son, there is something I cannot keep from you. I cannot keep you in darkness. Bull Roarer is doctoring your brother. Bull Roarer is a very great medicine man—his diagnosis is always right.' The father told him what Bull Roarer had discovered.

"At that moment the mother's brother of Chew Up entered. 'Nephew,' he hailed him, 'you have returned. I overheard you talking. That is why I came in.' That was all he said; taking his leave, he went to the sick man's tipi.

"Chew Up rose and followed him. He found the uncle sitting at the foot of his brother's bed. Chew Up gave sympathy to his brother, encouraging him with promises of his recovery. Then he turned to his uncle. 'You are a medicine man who can doctor. Why don't you doctor him?' he demanded. To his uncle's wife who sat at the far end of the tipi he then gave an order to leave. As soon as she was out the door, he drew his knife.

" 'Oh,' cried the uncle, 'I have failed. I cannot relieve him.'

"As he said that, Chew Up seized him by the hair, and pushing down his head, he stabbed his uncle twice. Then he went out. He had killed him.

"He went striding back to his father's tipi, where his mother was still cooking. 'Mother,' he said, 'I have killed your brother. Now go tell your sister-in-law what I have done to her husband. But tell her this, she is not to mourn for him.'

"His mother went to her sister-in-law with his bidding. 'Come,' she directed her, 'we will get your husband's body out of the tipi.'

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Neighbors observed that these helpers in grief "wailed a dead person until they received sufficient gifts from the man's relatives to stop. For instance," he continues, "if a man wants a favorite horse belonging to the brother of the deceased, he continues crying until he obtains it." Not only the deceased's estate, but the whole family property was drawn upon. If the death occurred in battle, then the demands of wailing and the value of gifts received were enlarged with the result that "from the liberality with which they dispose of their effects on all such occasions of the kind, it would induce the belief that they acquire property merely for the purpose of giving it to others."[6]

This is the picture of Comanche disposal of an estate as it appears to be. Actually, there were undoubtedly manifold deviations and variations towards either extreme. The patterns of disposal were nebulous and not well fixed.[7]

Nothing could better reveal the difficulty of evaluating the material which confronts us than the prevailing notions as to what happened in the disposal of the herd of horses belonging to A Big Fall By Tripping. On three points all the stories agree: he had waxed so fat that no horse could carry him, hence he was dragged from place to place on a good, strong travois; when he died he was too big to move to the mountains, so they dug a hole within his tipi and dumped him in; he left an estate of one thousand to fifteen hundred horses—all white. Concerning the settlement of the estate our four accounts diverge.

[6] Neighbors, *ibid.*, pp. 133–134.

[7] Professor Ralph Linton has acutely described the confusion and conflict in Comanche inheritance practices, laying emphasis upon the dynamics of cultural change. " . . . in 1870–1880 the practices of the Comanche with regard to inheritance were in a chaotic condition. There is good reason to believe that the whole problem of inheritance was new to the culture. The Plateau tribes from whom the Comanche had separated themselves when they entered the Plains were accustomed to destroy all a man's property at his death. This entailed few hardships and no serious economic loss, since property was limited to clothing and a few weapons and utensils. When the Comanche took over the Plains culture and acquired horses, inheritance became a real problem. Some individuals owned very large herds, in one case 2,000 animals. To slaughter the entire herd at the death of the owner was strongly against native sentiment and also prejudicial to the interests of the tribe. Since animals were freely loaned, several individuals might be dependent upon one man's herd for their mounts and would be seriously handicapped in hunting and war if these were killed. Stories indicate that there were some cases of wholesale killing during the early period, but by 1870 it had become customary to kill only a man's favorite horses and distribute the rest among the surviving relatives. No rules governing this distribution had been developed, with the result that there was usually hard feeling among the heirs." Linton, *The Study of Man*, pp. 297–298.

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428 *Case 40a. Inheritance: Estate of A Big Fall By Tripping*
●183 *Informant: Gets To Be A Middle-Aged Man*

"Before his death, A Big Fall By Tripping had made an announcement stating his desire that his best horses were to be slain with the arrows which he had in his three quivers. There were one hundred arrows in each. (Indeed, a wealthy man.) The remaining horses were to be divided up among the tribesmen. This order was executed by the tribe's best marksmen under the direction of a peace chief. Three hundred of the best were slain."

Case 40b. Inheritance: Estate of A Big Fall By Tripping
Informant: That's It

"A Big Fall By Tripping made no announcement whatever of testamentary desire. After his death the chief decided that the herd was too large for a woman to handle, so he set the warriors to slaying the horses. They worked at this until all the ammunition ran out. Still there were five hundred horses left. The chief thought it over then and decided that the woman could handle one hundred head without trouble. They picked out the gentler ones for her. Then the dead man's best friend took one hundred too. The chief asked the widow what she would like to have done with the rest, advising that it was good to give them to the husband's best friends. It was done in this way, with the mother and the grandfather of the most intimate friend of the old man coming in for a share too. The horse which had been used to carry the man's travois was buried in the grave with him."

Case 40c. Inheritance: Estate of A Big Fall By Tripping
Informant: She Invites Her Relatives

"The dead man's nephew rounded up the horses and started killing them. He was engaged in this when four disinterested men came to him and told him not to kill all of them. They told him to give the remaining horses to his own children and his friends. He decided to do as they suggested."

Case 40d. Inheritance: Estate of A Big Fall By Tripping
Informant: Talker

"There was an only child, a favorite daughter. Three nephews, Echo Of A Wolf's Howl, Little Crow and Old Weathered Tree, also survived him. They hated their 'sister' out of jealousy for her favored position during the fat man's lifetime. Because these men were her 'elder brothers,' they could control the disposition of the estate. They each selected forty or fifty good horses and shot the rest so that there would be none left for her. They killed so many that they lay in the meadow like so many shocks of wheat. They used their superior status to get even with her and she had no redress. If they had not been mean to her, they would have asked her to take some of the horses because her father would not have wanted her to be poor."

When confronted with such a situation as this the only sound interpretation the investigator can make is that inheritance rules were so uncertain

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that there was no commonly accepted formula to which retailers of the story could hold fast. Without this unconscious prompter of memory, the truth was soon dissipated and the event is described according to individual notions.

CONTRACT

Rounding out the survey of situations of possible legal significance, attention must be given to the phenomenon of contract wherein a party or parties assumed a definite, but limited, obligation by virtue of agreement. These obligations are not to be confused with such status-obligations as sharing food with one's father-in-law. These latter may be entered upon by acts of agreement such as marriage, but once entered upon they were social and legal duties inherent in the new relations and carried on indefinitely. Standing economic obligations of a reciprocal nature are not "contractual" in nature. Contract is a specific obligation undertaken at a specific time; the contractual arrangement is ended when the obligation has been fulfilled.

In addition to the transfer of medicine powers and the payment of goods to settle a grievance there were other contract situations involving the rendering of personal services. Of these the most usual was curing; the next most important was the undertaking of responsibility to lead a revenge war party. A third was occult prophecy, or seer-seeing. And a fourth was sorcery for hire, or putting the enemy of another person on the spot through evil use of medicine powers. The last is not substantiated by any case material, but was attested by informants. Saddle and arrow making, if done on order, would also come under this heading.

In seeking a medicine man to perform a cure, there were certain solemn steps customarily followed. The proposal and acceptance followed an institutionalized pattern which marked the occasion ceremonially as one of significance. In the first place, it was well to use a "political lawyer" to get the thing done, especially so, if the practitioner sought was a well known medicine man. A friend of the medicine man was known throughout the band as the best person to send to the doctor. The doctor would listen to him with willing ears. The petitioner was also familiar with the ways in which the medicine man liked to have the smoke handed to him and could make the petition smooth in many ways. Such intermediaries received their compensation not from the sick person, but from the doctor, as a share in the gifts received by him.[8]

[8] The use of a pipe lighting assistant is of limited Shoshonean distribution. Cf. W. S. Park, *Shamanism in Western North America* (Chicago, 1938), p. 127.

9: Gladwin E-5 (1940) 1948 NO6 Comanche NO6

does exist, senility or infancy almost always makes one or both participants comparatively ineffective.

The same factors which affect one's attitude toward more distant parents are also operative in the case of grandparents, with the effect of comparative age more strongly operative.

"Friends." While there is considerable variation in how clearly it is recognized and expressed by different individuals, there is no doubt that the Comanche share with other Plains tribes the custom of an institutionalized friendship between men of the same age. This usually had its origin in warfare, when one man or boy would save another's life by a deed of conspicuous bravery; or perhaps they would just go out together several times, and this friendship would grow to the point where it was openly recognized. Such friends became constant companions, sharing everything with each other, including their women friends; thus it is still customary for friends to refer to their respective partners as "our wife" or "our sweetheart," and other people use the dual form of the possessive in referring to a man's friend's wife as "your wife." A man uses terms for his friend's family which would equate the friend with a brother and this relationship was not infrequently realized in the old days through adoption. However, this rather romantic picture is somewhat spoiled by a revelation which profoundly shocked one of our rather idealistic interpreters, to the effect that this supposedly lifelong bond not infrequently became somewhat weakened, and a new "friend" came to fill the place of the old.[13]

Although warfare has become a thing of the past for the Indians (except for the battlefields of Europe and the Pacific), a few of the more romantic or lonesome individuals have attempted to continue this custom, but it has generally lapsed. One of our informants, (I), who came to his maturity shortly after the Comanche were rounded up at Fort Sill, embraced it quite vigorously, including the *nīmī?ɑra?* relationship, but discovered after a time that his "friend" believed only in one-way sharing, and was forced to give it up.

Outside of this formalized situation, the use of the term *hɑ̂ic*, "friend," is not at all clear. Two major focal relationships are covered by it: the institutionalized friend, and one's brothers (though usually not one's own brothers). Both of these are spread out, often with very attentuated behavorial associations, to include a great number of people—in fact, virtually all males of one's own age or generation. These two groups of people merge and are, in fact, never really separate, for even in the friendship discussed above, they are combined insofar as possible. Yet in many cases a person is recognized as one or the other; individuals differ in this regard. T, for instance, referred to a man as

[13] A derived, but very distinct, practice was for a man of low prestige to enter into a *hɑ̂ic* relationship with a successful warrior. The subordinate partner acted essentially as a body-servant for his dominant "friend," especially on war-parties or while hunting, and in turn basked in the reflected glory and protection of a strong man. Linton, personal communication.

192 used in various ball games.]; ʔitanucI *tipi pegs*; paya·pE *an edible tuber*; puhanahm-suapI *costume for Sun Dance (medicine clothes)*; puhkuhci? *contrary one* (The [171] [183] Comanche shared the general Plains trait of institutionalized contrary behavior); ta?siwó·? *buffalo (feet dragging)* [Used more commonly for buffalo by older Comanche than kuhcU or nimikuhcU]; taté?cI[135] *spider (our brother-in-law)*; pihire?cI *tarantula (hairy brother-in-law [spider])*; tamakwasu? *buckskin dress decorated with elk teeth (tooth dress)*; tivahpI *pinon nuts*; tikehkwa?I *a hunting party out to secure an immediate supply of meat*; kwahinacu?U *plover (back medicine)*; kwi?nai *eagle* (Said to be an older word for eagle than piahuhcu?, *big bird*); cihavihka?I *to be menstruating (to become starved)* [841] [Women were supposed to fast while menstruating]; cuhnikorohkU *bone breastplate*; so?me? *tanned buffalo hide*; haivi·yI *helldiver* (probably haic *friend* + pi·yi *duck*. Said to be a sacred bird and a common guardian spirit); hi?o·wihturu?A *windbreak of dead sunflower stalks*;[136] huhkU *collarbone, flute made of a collarbone*; mi *custom of giving away surplus food*; narohpa? *medicine given one by a supernatural* (na-, reflexive tohpa *dig out* + -?, nominalizer); nacóhkwe? *mesquite* (see cohkwe *to pound*; [262] mesquite beans were pounded into a mush and eaten); namavicó·?ni? *mesquite* (*to*

[135] This and the following word must be understood with reference to the reciprocal joking relationship between Comanche brothers-in-law. Thomas Gladwin, Comanche Kin Behavior, AA 50: 73-94, p. 87 (1948), gives *our testicles* and *our smell of dog's urine* as common phases substituted for this relationship term.

[136] Windbreaks are a Shoshone trait, Julian H Steward, Culture Element Distributions: XXIII. Northern and Gosiute Shoshone, Anthropological Records 8: 3, p. 272 (University of California. 1943).

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